STATE OF MICHIGAN

COURT OF APPEALS

BETTY JEAN RAGAN,

Plaintiff/Counter-Defendant-Appellee,

v

FIRST NATIONAL ACCEPTANCE COMPANY,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
August 15, 2006

No. 258856
Iosco Circuit Court
LC No. 03-000595-CH

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this land contract dispute, defendant First National Acceptance Company (First National) appeals as of right the judgment in favor of plaintiff Betty Jean Ragan entered after a bench trial. We reverse and remand.

In 1992, First National owned property that was previously the site of a gas station whose underground storage tanks had leaked fuel. Because of the contamination, the property apparently qualified for financial assistance from the now defunct Michigan Underground Storage Tank Financial Assurance Fund (MUSTFA). See MCL 324.21501 *et seq*. In May 1992, First National hired MacKenzie Environmental Services, Inc to remove the tanks and perform various other services associated with the remediation of the property including the preparation of various reports required by the Michigan Department of Environmental Quality (DEQ).[1] By August 1992, MacKenzie had completed the removal of the underground storage tanks and prepared the required Initial Assessment Report. See MCL 324.21308a.

In July 1993, Ragan and Ronald R. Kania agreed to purchase the property under land contract for $25,000 from First National. Under the terms of the land contract, Ragan and Kania agreed to pay $5,000 at closing, $250 per month for a period of three years and then pay the remaining balance in a single balloon payment at the end of the three-year period. In addition, the parties agreed to the following addendum with regards to the condition of the property:

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[1] For ease of reference we shall use DEQ to refer to the present agency and its predecessor.

> Property has qualified for MUSTFA clean up fund. Seller has already paid $10,000 deductible. No further cost outlays are anticipated. However, in the event further expenditures are required to satisfy [DEQ] requirements seller agrees to assume liability for these costs. [emphasis removed.]

In May 1994, Kania quitclaimed his interest in the property to Ragan. Ragan performed as agreed until the balloon payment came due in 1996. In 1996, Ragan attempted to obtain a loan to make improvements to the property and pay the balloon payment. However, testimony established that Ragan could not obtain financing without obtaining "a clean bill of health" concerning the contamination. For this reason, Ragan was unable to complete the land contract.

In 2003, Ragan commenced the present lawsuit. In her suit, Ragan alleged that First National failed to satisfy DEQ requirements concerning the remediation of the contamination, for which First National had agreed to remain responsible. Ragan further alleged that First National's failure to satisfy the requirements prevented her from obtaining financing or selling the property. For these reasons, Ragan asked the court to rescind the contract or, in the alternative, to order First National to satisfy the DEQ requirements.

A bench trial was held in September 2004. At the bench trial, the trial court determined that First National had failed to satisfy the requirements applicable to the contamination as it agreed to do in the land contract. The trial court then concluded that this failure warranted rescission of the land contract. Accordingly, the trial court ordered Ragan to convey her interest in the property to First National and ordered First National to return $7829.04 in principal payments to Ragan. First National then appealed as of right.

First National first argues that the trial court erred when it determined that Ragan's suit was timely filed. We agree. Whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006).

Although rescission and specific performance are equitable actions, see *Lenawee County Bd of Health v Messerly*, 417 Mich 17, 31; 331 NW2d 203 (1982) and *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995), the relevant period of limitations applies "equally to all actions whether equitable or legal relief is sought." MCL 600.5815; see also *Attorney General v Harkins*, 257 Mich App 564, 571-572; 669 NW2d 296 (2003). The equitable nature of the action is only relevant to determining whether the doctrine of laches can be applied to bar an action before the expiration of the applicable period of limitations. See *Rowry v Univ of Mich*, 441 Mich 1; 490 NW2d 305 (1992) and *Lothian v Detroit*, 414 Mich 160; 324 NW2d 9 (1982).

Based on the totality of the record, it is clear that First National knew or should have known that it would have to prepare and file a Final Assessment Report (FAR) with the DEQ in order to complete the remediation process it began when it hired MacKenzie. See MCL 324.21311a. It is also abundantly clear that First National chose not to prepare and file the FAR and, thereby, breached the terms of the addendum. Because this breach is the basis of Ragan's suit, the six-year period of limitations applicable to contract actions governs. See MCL 600.5807(8). It is undisputed that Ragan became aware of First National's breach in 1996. Hence, Ragan had until 2002 to sue First National over the breach. Ragan did not commence the

present suit until 2003. Therefore, although the equities of this case certainly favor Ragan, we must nevertheless conclude that First National was entitled to judgment in its favor on the ground that Ragan's suit was untimely. In light of our decision on this issue, we need not address the remaining issues raised by First National.

We reverse the trial court's decision in favor of Ragan and vacate the trial court's judgment and order of October 11, 2004. We remand for entry of judgment in favor of First National. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot